EXHIBIT A

STATE OF SOUTH DAKOTA) IN CIRCUIT COURT
: ss.
COUNTY OF PENNINGTON) SEVENTH JUDICIAL DISTRICT

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LINDA CORNELISON, on behalf of herself and all others similarly situated,

Plaintiff,

vs.

VISA USA, INC., MASTERCARD INTERNATIONAL, INC.,

Defendant.

COPY

Motion Hearing
Case No. CIV03-1350

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PROCEEDINGS: The above-entitled matter commenced on the 28th day of September, 2004, at the Pennington County Courthouse, Rapid City, South Dakota.

BEFORE: The Honorable Janine M. Kern

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APPEARANCES:

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Representing Defendant Mastercard.

THE COURT: This is the time and place set for motion hearing in File Civil C03-1350, in the matter of Linda Cornelison, on behalf of herself and all others simply situated, plaintiffs, versus Visa USA, Inc. and Mastercard International, Inc.

If the Plaintiffs would begin by noting their appearance with local counsel first, please.

MR. EISLAND: Aaron Eisland, local counsel for Plaintiff.

MR. MITBY: Steve Mitby, your Honor, for Plaintiff. I will spell my last name, M-I-T-B-Y.

THE COURT: Thank you.

MR. LEBRUN: Gene LeBrun for Visa USA, Inc.

MR. ERLANDSON: Good afternoon, Greg Erlandson, local counsel on behalf of Mastercard.

MR. BOMSE: Stephen Bomse, B-O-M-S-E, for Visa.

MS. CROWLEY: Good afternoon, Patricia Crowley on behalf of Mastercard International, Incorporated.

THE COURT: Thank you. Mr. Bushnell (sic) and Mr. Erlandson, you have filed a motion to dismiss. I would like to begin with you and then I'll hear from Plaintiff's counsel.

I'm sorry, Mr. LeBrun.

MR. LEBRUN: Mr. Bromse will make the argument.

MR. BOMSE: Your Honor, I don't know if you

have any preference as to whether or not counsel stands when they address you or remain seated.

THE COURT: Either. Whatever you are most comfortable with. You can sit, you can stand.

MR. BOMSE: I'm actually going to stand up and test my eye sight here, but if I find my notes are swimming, I may change my mind.

Thank you, your Honor. It's very nice of the Court to set aside this time to hear us on this motion. As your Honor may be aware, from the papers, this is one of a number of what we call follow-on lawsuits which were filed in various states around the country, approximately 20 of them, in the wake of the settlement of a federal antitrust class action against my client, Visa and Mastercard. And the way we have been doing this in the various states, is Mastercard and Visa have divided up the arguments so I will be speaking this afternoon principally on behalf of both defendants. If the Court --

THE COURT: That's fine.

MR. BOMSE: In those cases we have argued a number of these motions previously and five of them have been decided already.

We referenced three in our papers, New York, Michigan and North Dakota, where the courts granted our

motions to dismiss essentially on the same grounds that we urge here. There is a fourth case that was decided subsequent to the last briefs which is Minnesota. It's a case called Gordon Gutzwiller and the Court has received that opinion which we sent in subsequently.

There is -- in addition, a fifth case, which, like the other four, also dismissed the antitrust claims, although in that case it was on entirely unrelated grounds. Obviously, we hope that we'll be able to persuade your Honor that those cases were correctly decided and that your Honor will elect to follow them.

We believe that while it is clear that South Dakota, like the other states in which these cases are pending, has decided that it does not wish to bar all indirect purchaser cases. That in no means grants a license for any and all indirect purchases or cases without regard to any standing limitations. We believe rather that the intention of the legislature was that in appropriate cases indirect purchaser cases be permitted, but that there still needs to be an analysis of standing under what the Supreme Court and various other courts have referred to as the analytically distinct requirement of standing. Analytically distinct, that is from the Illinois Brick Rule which is a specific federal policy based rule.

Now, just to put this matter in some context factually. We, of course, accept the allegations of Plaintiff's complaint for these purposes. They claim that Visa and Mastercard have rules which improperly tie the acceptance of Visa and Mastercards credit cards to Visa and Mastercards debit cards. They claim that, as a result of that, merchants ended up paying more to accept Visa debit cards then they otherwise would have. To that extent, these cases and the federal case are entirely common. That was that description I just gave you was a description of the claim in the federal case.

In the federal case, that was where it stopped. That is, the merchants claimed that they ended up paying too much money and as your Honor again may know, if you've had an opportunity to read the papers, we settled those cases on the eve of trial facing a 100 billion dollar damage exposure paying three billion dollars seemed like the better part of valor.

Now, in these cases, we regard as important and we find depositively a different additional step because the claim now made is that once those merchants pay too much, as it's alleged, to accept Visa and Mastercard debit cards, they, in turn, raise the prices of everything they sold to every consumer and regardless of how that consumer paid for those things. Thus we don't have a

claim here that involves the purchase of our service, our debit card service, which is offered to merchants. We don't even have a claim, based upon the resale of a product containing that service as an ingredient. It's hard -- hard to imagine litigation. Particularly what that means, it's clear that it doesn't include the claims here because in fact we know that according to the plaintiff's theory and their complaint, it doesn't matter whether a debit card in fact entered into the resale transaction.

In that sense, these claims are what we have referred to in our papers as overhead claims. It is, as if some cost of doing business, we gave an example of a telephone service where the telephone prices went up to merchants and the theory would be the merchants then raised the price of spaghetti or tennis rackets or television sets because they paid too much for telephone service. Or to use an example that the Plaintiffs seem to be fond of. They say this is a tax and a tax is in effect a form of overhead. It's a cost of doing business. And the question that we confront here today is, can you bring a claim like that merely because South Dakota, which generally follows federal law, and there is abundant law that says that they are expected to follow antitrust law merely because in this case the South

Dakota legislature has decided that we are going to a limited extent to depart from federal law by allowing indirect purchaser cases to be brought.

They say that the language of the statute begins and ends. The inquiry although, as I'll explain in a few minutes, even they don't really believe that because they don't argue that there is no standing limitation. They just want you to adopt a different one. Something they call target area and I'll come back to that.

But their basic position is when Illinois Brick was disavowed in South Dakota, that was the end of standing. We say that that is not so. Any more than it was found to be so in New York or Michigan or North Dakota or Minnesota and any more than courts in those states in other cases not involving the Visa and Mastercard have simply abandoned the standing inquiry because they are Illinois Brick repealer states.

THE COURT: Well, how would you respond to the Plaintiff's alternative suggestion to the Court that if the Court is persuaded by your argument, that they should be allowed to redefine the class to include only South Dakota residents who purchase goods or services using Visa or Mastercard branded debit cards?

MR. BOMSE: Well, I would say this. I would say that it is a class definition which makes no sense in

terms of the allegations. It's an attempt really in a -- I don't want to be projective in suggesting it's cute because that's not exactly what it is. But it is attempting to connect two things that have no connection. Let me explain what I mean. The theory that they have, because that's -- we know it from the class that they have originally defined here and everywhere is a class in which the presence or absence of a debit card has nothing to do with the offense. So we know, as we start out, that there is no causation here that involves a debit card otherwise that would have been the class that they would have defined.

Their theory inside is in the same way as my telephone or tax or janitorial service example, somebody pays too much, they end up passing the cost along in all products. So that the presence or absence of a debit card is therefore unrelated to the theory of violation. To give the Court an example, I'll go back to my telephone example. Let us say that the theory was that there was a conspiracy to raise telephone prices. The claim is brought. Say prices of everything were raised to every purchaser in the State of South Dakota. Motion to dismiss is made. They say, well, let us redefine our class as people who bought things over the telephone as opposed to coming into the store. It seems to me we

would fairly say there, as we ought to fairly say here, hey, wait a minute, that makes no sense. The existence of a telephone sale as opposed to an in-person sale has nothing to do with the theory of what was wrong anymore than it does in this case.

So it seems to me that their attempt ought to fail because it really doesn't have anything to do with the case. I could in fact go further, but I think I would be outside of the pleadings. But when we were arguing this case with one of counsel's partners in Washington, DC, the Judge said, you know -- because the same argument was made by the same lawyers -- the Judge said, "you know, I understand the theory, but isn't it somehow backwards to say that it's the debit card people who somehow ought to have the claim as opposed to anybody else? After all, the debit card people are the people who presumably got the benefit of having a debit card. They wanted to use the debit card."

Now, I don't think you need to go that far here. I think you merely need to find that there is no relationship between the offense and the proposed redefined class in order to say that that kind of a redefinition isn't appropriate. Again, while this Court, of course, is going to make up its own mind, this issue was briefed specifically in Michigan on a motion for

reconsideration which the Court denied as having raised no new arguments.

Now, your Honor, if we go back to the question of why we say standing rules still ought to apply here. It seems to me, that we go back to the fact that we do have a difference between Illinois Brick and standing rules. As I said, analytically distinct. And courts have recognized that one needs to still look at whether a claim is so remote, whether the damages claimed are so speculative and complicated in proof that we really are beyond the bounds of what is sensible even in a place where indirect purchaser cases are allowed.

As I say, in none of the states where we have been successful so far has the law been any different. We have here not a claim that somebody's bought a product that indirectly passed through a chain of distribution, we don't have a claim that this is a product that became an ingredient in something that passed through a chain of distribution. We have a claim here that is in effect for every single product purchased by anybody not even in a way that involves this product. This is, as we say, a non-purchaser case just as the Court found in Michigan and then more recently in Minnesota and North Dakota.

You really don't have an assault, Plaintiffs arguments to the contrary notwithstanding. You don't

have an assault here on indirect purchaser cases. You have here a sensible application of some limits to claims which really can't be proven and if we think about what it is that's being alleged here and what it is the Court is being asked to embark upon if this case goes forward, I think that that becomes clear. I don't know what it is that Ms. Cornelison does or doesn't do herself in terms of purchase, but if I think of myself on a Saturday morning going out to do the errands, you go to the gas station, you fill up your tank and you pay perhaps with cash. You go to the grocery store, maybe you buy 20 or 30 different items. You might write a check there. You go pickup the dry cleaning, maybe you go and buy yourself a new tennis racket, at night maybe you go out to dinner. One day one person we now have to know what is it that happened with respect to the dry cleaning and the corn flakes and the gasoline and the meal in the restaurant and the tennis racket. We have to know what it is that happened to the price of those goods because of some tiny little fraction. Because, to begin with, the price that merchant pays for card services is on the order of one to one and a half percent, if it's a debit card. By the time you spread -- decide what portion of that is, quote, "an overcharge", and you then spread out that overcharge out among all of the purchases, you can't be talking

about more than let's say ten cents on a hundred dollar purchase.

And yet the theory is that for all of these various things, somehow prices were affected in a way that adversely affected Ms. Cornelison and any other consumer in a class to be certified in this state. And it doesn't seem to me that once you think of it in those terms, that the rhetoric which the courts have been prompted to use in Michigan and in New York and in Minnesota is really hyperbolic at all when they say these claims are far beyond the capacity of a court to try. So speculative that no expert could possibly deal with them and therefore not of a kind that are capable of being adjudicated under the antitrust laws whether you allow indirect purchaser claims or you don't.

I really do think that in some ways the Minnesota Court, which is the most recent and I think the most elaborate, pretty well incapsulated what we would have to say to your Honor in the summary of its ruling. The Court said that, "despite the broad language of the Minnesota antitrust law as set forth in that statute and the broad language contained in a case in that court, called Philip Morris, not every person claiming some remote or tangential injury from an antitrust violation can maintain a suit under the Minnesota antitrust laws."

The Judge then said "a literal reading of the Minnesota statute is broad enough to encompass any harm it can be attributed either directly or indirectly to the consequences of an antitrust violation." That being, of course, exactly the argument that the plaintiffs make. They say, "even though" -- I'm sorry, the Court in Minnesota said, "even though the language of the statute is clear and unambiguous, the Court must interpret the statute in a manner which will not lead to an illogical or absurd result."

"In this case, the Plaintiff's proposed interpretation would lead to a decision that would provide a remedy in damages for any injury, however minor, that might conceivably be traced to the antitrust violation in issue. In short, the Plaintiff's proposed construction of the Minnesota antitrust law, carried to its logical conclusion, would provide the general public and/or general taxpayer standing to sue for most antitrust causes of action."

"In this case, the Plaintiff's proposed class is likely as large or larger than a class limited to Minnesota residents who pay property or income taxes."

"In this case, Plaintiff has only an abstract or tenuous connection to the subject matter of the case. Therefore, he lacks standing to sue for the injuries he

claims to have incurred."

Now, that's longer than I ordinarily would trouble the Court to read, but it seems to me that there is a particular reason why it is appropriate to read to the Court at that length from the Minnesota opinion. And that is that the Plaintiff's have in fact told your Honor that you ought to pay particular attention.

THE COURT: What page, Counsel?

MR. BOMSE: Page 12. There is pages eight and nine and pages 12 here. I'm reading, your Honor, Minnesota's antitrust statute, exactly like South Dakota's, grants standing to persons injured directly or indirectly by an antitrust violation. They then refer to this Philip Morris case which was referenced also by the Judge. Then to quote again, "because Philip Morris decisively rejects defendant's arguments, it must be considered in some detail." In other words, they are saying, take a look at the same statutory language, take a look at what Minnesota does. Well, we say, amen to that, but the decision that one, of course, needs to take a look at, we suggest, is the decision addressing a claim which is virtually identical brought by the same counsel and decided within the past few weeks.

It is also the case, your Honor, that South Dakota actually has a statute which urges the Court to construe

its laws in a way that is congruent with the laws of other states. Not only the federal law, but the laws of other states. It's 37-1-22. And Plaintiff's also, in their brief, again urge the same -- the same thing here at pages eight and nine. Decisions -- again quoting, "decisions from other state courts construing statutes with virtually identical language provide persuasive authority as to how South Dakota courts should interpret South Dakota's antitrust law and they quote there SDCL 37-1-22. It is the intent of the legislature that in construing this chapter, that the courts may use, as a guide, interpretations given by state courts to comparable antitrust statutes.

I would say, your Honor, that in this case the comparable antitrust statutes, by their own terms, is Minnesota, but it also is New York which is a repealer state. Michigan, that's the Stark case, which has essentially identical language and is a case again brought allegedly essentially identical violations by the same counsel, and North Dakota. It is not merely that those courts have ruled in the way they have done, but the fact that their analysis, we believe, is correct, that together with the statute urging conformance, we would suggest, adds yet further support for the broad argument that we would make.

So, your Honor, we have tried to set out as carefully as we can and as clearly as we can why we think these cases can't go forward. I've tried today to summarize for the Court what our views are on that issue and while I'm, of course, happy to respond to questions that the Court has, at this point that would be our submission.

THE COURT: All right. The Court would like to hear from Ms. Crowley. Is there anything you want to add?

MS. CROWLEY: No, I have nothing to add. Thank you, your Honor.

THE COURT: All right. Counsel?

MR. MITBY: Thank you, your Honor. Steven Mitby on behalf of the -- on behalf of the Plaintiff.

Your Honor, this case is about South Dakota law not federal law, not New York law and not the law of any other state.

First, motions to dismiss are extremely disfavored under South Dakota law and are rarely granted unless this case is an extremely unusual case in which the pleadings alone demonstrate to your Honor that there is no way that the Plaintiffs could prove a cause of action, this Court should not consider dismissing these claims of the pleadings.

Secondly, by enacting one of the broadest antitrust remedial statutes in the United States, the South Dakota legislature explicitly rejected the very limitations on standing that the Defendants advance here. South Dakota Codified Law 37-1-33 states unequivocally, and I'm going to quote, "no provision of this chapter may deny any person who is injured directly or indirectly in his business or property by a violation of this chapter, the right to sue for and obtain any relief afforded under Section 37-1-14.3".

Now, under the expressed terms of this statute, Plaintiffs have an absolute right to bring this action in a South Dakota court because they were injured by defendant's anti-competitive conduct. Defendant's illegal tying arrangement caused injury to consumers by raising the price of consumer goods throughout and in fact, the defendants do not even deny that consumers made a portion of the fees that they charged to merchants and how could they? Whatever portion. Excessive fees merchants didn't absorb of your overhead, consumers might have paid in higher prices in this case. There are two groups of victims in the Defendants' anti-competitive conduct, consumers and merchants. Moreover, the injury to merchants is not speculative or remote. While merchants absolve and part of it, like 12 billion dollars

over the nation by out of pocket. No one, including the defendants, disputes that the consumers also paid a substantial share of those costs.

Now, in an effort to avoid the implication was South Dakota broad remedial and defendants are here seeking to draft the federal standing requirement under 37-1-33. Federal standing requirements are not appropriate for South Dakota law because they're based on an entirely different type of antitrust injury. Federal law doesn't recognize antitrust injury to indirect purchasers or anyone else besides those who bought directly from the defendant engaged in the illegal anti-competitive practice.

In this case, your Honor, the defendants ask this Court to adopt the Supreme Court's five factor test for antitrust standing which was articulated in the Associated General Contractors case. That case was decided ten years after the Supreme Court decided the Illinois Brick case and adopted the direct purchaser limitation. At the time Associated General Contractors was decided, the direct purchaser limitation was a feature federal antitrust law and standing requirements were crafted liberally in order to further the purposes of the federal antitrust statute which was to limit compensation to direct purchasers and avoid a series of

lawsuits by indirect purchasers who couldn't be compensated under substantive federal law anyway. And consistent with the Supreme Court standing, Juris Prudence in other areas, the Court adopted a test that quite logically focussed on whether the plaintiff had sustained a legally cognizable injury and was capable of recovering damages. That's the five factor test that the Supreme Court adopted and the Supreme Court encouraged lower courts in the federal system to consider factors such as whether the plaintiff is a consumer or a competitor in the restrained market, whether the injury alleged is direct firsthand impact of the restraint alleged, whether there were more directly injured plaintiffs with a motivation to sue and whether the plaintiffs claims would resist duplicative recoveries or compensation from damages. Precisely factors that prompted the Court in Illinois Brick to adopt the direct purchaser limitation in the first place, your Honor.

So the South Dakota legislature had an opportunity to consider these factors when it rejected the direct purchaser limitation and adopted Section 37-1-33 which gives anyone who has been injured by an antitrust violation the explicit right to sue.

THE COURT: What is the import of the last part of that statute "in any subsequent action arising from

the same conduct, the Court may take any steps necessary to avoid duplicative recovery against a defendant"?

MR. MITBY: Well, I think that is a logical outgrowth of the statute. It gives the Court the right to limit damages in some way or take some other measure in the context of an individual case to prevent a duplicative recovery and that makes sense. But what the South Dakota legislature rejected, and I think this second sentence of the statute proves it, is the idea that the risk of duplicative recovery should somehow be generalized that a standing requirement that applies to all cases.

The South Dakota legislature has vested this court and every other court in South Dakota with the duty of fashioning remedies in a particular case such as limitations on damages, such as some way of bringing together all of the potential plaintiffs into a single lawsuit as a way of avoiding duplicative recoveries. The legislature didn't authorize South Dakota courts to adopt general rules of standing that would preclude a recovery by an indirect purchaser simply because there is an inherent risk of duplicative recoveries.

So I think that the second sentence of that statute confirms the point that the Plaintiffs are trying to make in this case, which is that we -- we are entitled to a

case -- a decision in the context of this individual case about how best to reduce any potential risk of duplicative recoveries and I think, as this Court will recognize after discovery has been completed, the settlement that Defendants paid to the merchants as a result of the class action, the prior merchant class action, was only a tiny fraction of the damage that was actually caused in those cases and that is inconsistent with the purpose of the antitrust laws which is to provide for treble damages for violations of antitrust policy.

THE COURT: The parties chose to settle. We don't know what the damages would have been should the matter been tried.

MR. MITBY: That's correct, your Honor, but my point is that this Court would be entitled to give them settlement credit or find some other remedy to ensure that there is no duplicative recovery in this case. But South Dakota has rejected the notion that the risk of duplicative recovery should be incorporated into generalized standing requirements. The source that the federal system has adopted.

The standing test in Associated General Contractors is related to the types of injuries that are compensable under federal law and, of course, this makes sense

because the Supreme Court has explained again and again that a legally recognized injury is a fundamental requirement for standing. There is a series of decisions on this point and I have brought along one with me to show to the Court for illustrative purposes. May I approach, your Honor?

THE COURT: Yes.

MR. MITBY: This is a recent decision, Bennett versus Spear from the 1997 term of the Court. And if, your Honor, will look to the highlighted text, Justice Sclera wrote, "to satisfy the case or controversy requirement of Article III, a plaintiff must, generally speaking, and demonstrate that he has suffered injury in fact, that the injury is fairly traceable to the actions of the defendant and that the injury will likely be redressed by a favorable decision". There is language of this sort in a variety of decisions from the United States Supreme Court over the years addressing standing.

The point of this is that in the federal system courts adopt standing rules that further the goal of compensating plaintiffs who are entitled to be compensated and who can show an injury. Under federal law an indirect purchaser can't show that type of injury because that type of injury isn't recognized by federal antitrust laws. It would not make sense to take standing

requirements that have been developed for the sole purpose of trying to screen out folks that can't allege a legally recognized injury and import them into South Dakota law which has rejected the federal concept of injury allows indirect purchaser suits. In fact, goes so far to say that anyone injured by an antitrust violation has a right to sue for damages under South Dakota law.

The only factor in the federal test that is not explicitly related to whether the antitrust injury was direct or indirect, is whether the damages claims are speculative. And in this case the defendants have no basis at this very preliminary stage of the litigation for arguing that the damages claims are speculative because there has been no discovery, there has been no expert analysis. Plaintiffs haven't had an opportunity to come forward to this Court as in responding to a motion for summary judgment and show exactly what evidence we have adduced that demonstrates that these claims for damages are not speculative.

If, at some point down the road, defendants can convincingly argue to this Court that the damages claims are speculative, couldn't be proved with certainty, aren't entitled to compensation under South Dakota law, then this Court can and should revisit Battley (phonetic), but defendants aren't arguing that because

thus motion to dismiss and under South Dakota law the defendants can't attach any evidence or make any evidentiary arguments that are based on the facts of this case. They have to look solely to the pleadings.

I would submit that when counsel for Visa says that the damages claims in this case are speculative, he is relying on an assumption about what the evidence is going to show at a later stage and we, as Plaintiffs, have not had the opportunity to show to this Court what the evidence in fact proves. So we would like to -- we would like to save those arguments about whether this is -- this claim is speculative or not until both sides are in full possession of the facts.

Now, defendants, throughout their argument this morning, have offered no reason for this Court to disregard the plain language of Section 33-1-33. Defendants proposed limitation on standing would leave most of the injured parties in this case without any kind of remedy at all. And I submit that that result, your Honor, is plainly contrary to the legislature's purpose in enacting Section 37-1-33 and that purchase was to afford, quote, "any person", end of quote, injured by an antitrust violation, the right to sue regardless of whether the injury was direct or indirect. And under defendants rule, only the merchants could sue for

inflated prices paid to consumers as a result of an illegal tying arrangement. This approach would leave consumers who are, by far, the most populous group of the defendants antitrust victims without any kind of redress at all.

I want to respond briefly to a point that the defendants made when they said that that the overcharges are alleged to be spread over a wide variety of consumer goods and weren't really limited to people who were consumers in one imagination or another of Visa and Mastercard. I think that that argument really proves too much. It would leave consumers in this case without a remedy precisely because of the manner in which the defendants chose to implement their tying ring. In particular, Visa and Mastercard specifically prohibit merchants from assessing on a debit card transaction a fee directly to the debit card user. Under Visa's own rules merchants are required to spread whatever portion of that cost that they don't absorb in that overhead on to all consumers. They can't just target pick debit card users. Presumably not very many people would use the Visa debit card. This puts defendants in the position of being able to adopt policies that automatically deny most of their victims standing to sue and thus any possibility of compensation and this lesson will not be lost on

future antitrust violaters. It will almost certainly endeavor to structure their conduct as to take advantage of any judicially created bars to recover. Given the South Dakota legislature's unambiguous mandate in favor of broad antitrust remedies, this outcome would be unaccepted.

The defendants have also claimed that the Plaintiff's injuries are somehow derivative or remote. This is wrong for several reasons. First, no one disputes that South Dakota law provides a remedy for an indirect purchasers injury. Counsel for Visa has conceded this afternoon, and I don't think there is anyone that would attempt to read that type of provision out of the statute, but in this case the injury to consumers, is actually a lot less derivative or remote than the injuries for indirect purchasers have recovered in other cases.

In this case, remember, your Honor, that there are only two groups of people who are potential plaintiffs and potential victims of this tying arrangement, merchants and consumers. There is no long supply chain. There is no long, long distribution chain. There is no passing through these charges through a series of middle man. There is two groups of merchants and consumers and the defendants would concede, I suspect, that indirect